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SUBJECT: CHALLENGES TO CLEAN BUSINESS IN CAMBODIA'S CORRUPT
ENVIRONMENT

SENSITIVE BUT UNCLASSIFIED

¶1. (SBU) Summary. The large turnout at a seminar discussing the application of the Foreign Corrupt Practices Act (FCPA) illustrates just how daunting the challenges are for international businesses to conduct clean business in Cambodia's highly corrupt business environment. Questions from the mainly business audience centered on defining the threshold to address when facilitation fees rise to the level of bribery. Participants gained a better understanding of the significant risks they face by engaging in corrupt practices. End Summary.

The Long Arm of the Law

¶2. (SBU) PACT and AmCham (supported by USAID) recently organized a seminar for the foreign and local business community to enhance their understanding of the U.S. Foreign Corrupt Practices Act (FCPA). The level of interest, more than double the expected turnout, illustrates the challenges of doing clean business in Cambodia's highly corrupt environment and the serious concerns of business people about falling afoul of the law. A U.S. prosecutor from New Jersey hammered home the scope, breadth, and depth of the FCPA, including who it applies to, what actions are covered, and potential penalties for wrongdoing.

Corruption: Business as Usual

¶3. (SBU) Participants highlighted the challenges they face to avoid corruption, claiming that ninety percent of Cambodians they encounter in business dealings (both government officials and business people) do not understand the concept of clean business. They stressed that acceptance of corrupt practices as business as usual is firmly entrenched in Cambodian culture, making it very difficult for the participants to refuse to play along. There was universal concern about the legality of payments to government officials necessary in the normal course of doing business in Cambodia, from fees to obtain a commercial license to payments to the fire department to extinguish a fire.

¶4. (SBU) Representatives questioned the point at which acceptable "grease money", which is permitted under the FCPA and nominally illegal under Cambodian law, rises to the level of a bribe under the FCPA. While some complained that failure to meet the demands from officials for bribes would result in the discontinuation of their business operations, arguing that this amounts to extortion, the prosecutor explained that the FCPA makes no distinction between extortion and bribery, and that an extortion victim's cry of "they made me do it" is no defense for illegal actions.

¶5. (SBU) Several business representatives noted the particularly thorny issue of assuming liabilities in merger and acquisitions as well as joint venture activity with local Cambodian partners. They explained that they generally assume that most successful Cambodian business operations at one point or another will have engaged in activity which would be prohibited under the FCPA if carried out by

the prospective international partner. As such, they worried that merging or forming partnerships with Cambodian firms would de facto expose them to risks under the FCPA. The prosecutor explained that companies can be held civilly liable for the actions of their partners or consortium members if reasonable due diligence would have exposed the illegal activity. Additionally, he dispelled the notion that companies can skirt the law by appointing an agent to make payments on their behalf (believed to be a common practice here) and stressed that a company is liable if their personnel give money to another knowing that the money will be used to make an illegal payment.

Political Will Needed to Tackle Corruption

¶6. (SBU) AmCham Chairman and local attorney Bretton Sciaroni warned that the eagerly anticipated Anti-Corruption Law will not be a panacea to eradicate the country's corruption problems, as amply illustrated by the lack of political will to employ existing legal tools to tackle corruption. For example, Cambodia currently has laws which criminalize corruption-related offenses, including extortion and bribery. He noted that the political will to enforce these provisions is lacking, as evidenced by a dearth of corruption-related prosecutions. He warned against allowing the lack of prosecutions to lull business people into a false sense of immunity and an acceptance that corrupt practices are business as usual. Cambodia has a well-earned reputation for corruption, it ranks 166 out of 180 on Transparency International's Corruption Perception Index in 2008. The recent increase in USG FCPA enforcement activities, coupled with Cambodia's reputation, should cause businesses to be more circumspect about the legality of their activities.

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¶7. (SBU) The Ambassador also attended the seminar and acknowledged that corruption is a problem the world over, but stressed that what is important is to develop the proper tools and motivation to use them to combat the practice. She emphasized the need to change the environment which allows corruption to flourish, particularly by attacking petty corruption which permeates the everyday lives of Cambodia's citizens. The most significant challenge, she stressed, is to find a way to have conversations with the government about corruption which are productive.

Comment

¶8. (SBU) Corruption permeates all levels of Cambodian society, placing international businesses in a difficult situation to ensure that they adhere to clean business practices and do not run afoul of the FCPA. Raising awareness among the business community of the reach of the FCPA is one method to discourage corrupt practices. However, the real challenge is to change the accepting mindset and the permissive environment in Cambodia which allows corruption to flourish. Increasing understanding by Cambodian government officials of the FCPA and the limitations it places on the activities of international firms could help to spread understanding that clean business is an alternative to the corrupt business as usual in Cambodia. This effort can only be useful, however, if combined with other USG anticorruption strategies, such as passage and implementation of an anti-corruption law and support for the Clean Business Initiative which seeks to promote clean business practices and to improve the business environment by supporting fair competition.

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